

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NAVIDEA BIOPHARMACEUTICALS, INC.,)
Plaintiff,)
v.) CASE NO. 2:17-cv-95
BEIJING SINOTAU MEDICAL RESEARCH CO., LTD.,) JUDGE ALGENON L. MARBLEY
Defendant.) MAGISTRATE JUDGE DEAVERS

JOINT STATUS REPORT

Pursuant to this Court's September 21, 2017 Order directing the parties to file a status report every thirty days (Dkt. No. 70), Plaintiff Navidea Biopharmaceuticals, Inc. ("Navidea") and Defendant Beijing Sinotau Medical Research Co., Ltd. ("Sinotau") submit this Joint Status Report.

I. CASE STATUS

This case arose from Navidea's Asset Purchase Agreement ("APA") for assets relating to the drug known as "Lymphoseek," under which Cardinal Health 414, LLC ("Cardinal Health") has acquired from Navidea certain assets relating to the manufacture and sale of Lymphoseek in North America, including the product registrations for Lymphoseek in the United States with the Food and Drug Administration and all data referenced therein. Navidea filed its Complaint against Sinotau on February 1, 2017, and alleged that Sinotau engaged in actions that would tortiously interfere with closing of the APA in breach of the implied covenant of good faith and fair dealing, and sought a declaratory judgment that the APA would not materially impair

Sinotau's rights under Navidea's and Sinotau's exclusive license contract dated August 31, 2014 ("China Agreement"). Dkt. No. 1.

In conjunction with its Complaint, Navidea moved for a temporary restraining order enjoining Sinotau from communicating with Cardinal regarding the APA or from "interfering" with the APA.¹ On February 3, 2017, Judge Marbley conducted a telephonic conference with counsel for Navidea and Sinotau regarding Navidea's requested TRO. The Court issued the requested TRO on February 3 pursuant to Fed. R. Civ. P. 65. Dkt. No. 13.

After Judge Marbley issued his February 3 TRO, he held several in-chambers settlement discussions between Sinotau and Navidea. Cardinal attended most of the settlement conferences at the invitation of the Court, even though it is not a party to the Ohio Action. With each new Court ordered settlement conference, Judge Marbley also continued the TRO.

Judge Marbley held another in-chambers settlement conference on March 1, 2017. Before the commencement of that conference, Cardinal Health informed the parties it was not willing to provide the assurances and documentation requested by Sinotau during the parties' last settlement meeting. Cardinal Health nonetheless appeared at the settlement conference, and while the parties were unable to resolve the dispute, Sinotau and Navidea discussed possible resolutions that would not involve Cardinal Health. Judge Marbley continued the TRO through Monday, March 6, 2017. Dkt. No. 41.

Navidea held its shareholder meeting on Thursday, March 2, 2017. The APA between Navidea and Cardinal Health closed on Friday, March 3, 2017.

¹ Since the filing of the Complaint, Navidea filed its Motion for Leave to File the First Amended Complaint with its First Amended Complaint as an Exhibit. Dkt. No. 54. Sinotau opposed this motion (Dkt. No. 62). This case was stayed prior to Navidea submitting its reply or the Court making any determination on this matter.

Judge Marbley held another in-chambers settlement conference on March 6, 2017, after the APA closed. The negotiations that day were exclusively between Sinotau and Navidea, although Cardinal Health also attended part of the conference. No settlement was reached. By Order dated March 7, 2017, Judge Marbley dissolved the TRO. Dkt. No. 42. Per Judge Marbley's Order, "Due to the closing of the Asset Purchase Agreement between Cardinal and Navidea (defined in previous orders), the temporary restraining order issued in this case is now moot and is hereby **DISSOLVED.**" *Id.*

By his March 7, 2017 Order, Judge Marbley also scheduled a telephonic status conference for March 14, 2017, at 10:00 a.m. EST, which was held as scheduled. *Id.* Sinotau and Navidea informed Judge Marbley of the status of their talks, but they reported no meaningful progress. Judge Marbley orally suspended all further court-ordered settlement discussions and said he would stand back until further needed.

In the time that has lapsed since the parties have appeared before Judge Marbley, Sinotau filed a motion to dismiss this Action under F.R.C.P. 12. Dkt. No. 49. Navidea disagrees with the assertions raised in Sinotau's motion. The parties have filed briefs on the issues raised in Sinotau's motion to dismiss, and the motion remains pending at this time while the case is stayed. Dkt. Nos. 56, 58.

One day after Navidea filed its Complaint in this Court, on February 2, 2017, Sinotau filed a similar lawsuit in the District of Delaware against Navidea and Cardinal Health, C.A. No. 17-110-LPS-MPT ("Delaware Action"). Because this suit was the first-filed suit, Navidea and Cardinal Health sought transfer of the Delaware Action to this Court. Delaware Action, Dkt. No. 49. The Delaware Court granted Navidea's and Cardinal Health's motion to transfer the Delaware Action to this Court on June 26, 2017. Delaware Action, Dkt. No. 57. That action is now pending

in this Court as Case No. 2:17-cv-00603-ALM-EPD ("Second Ohio Action"), which is also subject to a stay and is treated as a related case. Second Ohio Action, Dkt. Nos. 67-68.

Since Sinotau and Navidea have initially appeared before this Court and submitted its prior status report, employees and representatives from Navidea and Sinotau have been in direct discussion regarding a possible settlement framework for this matter and the Second Ohio Action. Navidea and Sinotau have also been working with Navidea's European distributor to assist with resolving the issues present in this Action and the Second Ohio Action. Because the possible resolutions of the cases involve multiple parties located in several continents and include multiple legal issues, the settlement discussions have been complex and preparation of formal agreements has taken longer than anticipated as a result. The parties have exchanged information and documents, have executed a non-disclosure agreement related to the settlement discussion, and have started to prepare drafts of the agreements necessary to resolve the Ohio Actions. The parties have been actively engaged in these discussions and continue to seek to resolve all of the disputes at once without further relying on judicial resources. Navidea, Sinotau, and Navidea's European distributor have agreed to a possible settlement framework, which requires substantial diligence and further refinement in which the parties have been engaged. The parties have exchanged multiple revised drafts of a three-way agreement to which Navidea's European distributor, Navidea, and Sinotau would all be parties. This three-way agreement is one of multiple agreements that the parties need to finalize, and aligns with the settlement framework related to this matter and the Second Ohio Action. Although no final and formal settlement has yet been reached, the parties anticipate further discussion and the continued exchange of further draft agreements in the coming weeks.

Dated: October 23, 2017

Respectfully submitted,

/s/ Matthew D. Zapadka

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Dated: October 23, 2017

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